

4310-EJ

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

[NPS-AKRO- 19165; PPAKAKROZ5, PPMRLE1Y.L00000]

RIN 1024-AE28

Alaska; Subsistence Collections

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service proposes to allow qualified subsistence users to collect and use nonedible fish and wildlife parts and plant materials for the creation and subsequent disposition (use, barter, or sale) of handicrafts. The rule would also (1) clarify that collecting or possessing living wildlife is generally prohibited and (2) limit the types of bait that may be used to take bears for subsistence uses.

DATES: Comments must be received by 11:59 PM EST on [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Regulation Identifier Number (RIN) 1024-AE28, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail or hand deliver to:* National Park Service, Regional Director, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501.

Instructions: All submissions received must include the agency name and docket number or

RIN for this rulemaking. All comments received will be posted without change to www.regulations.gov, including any personal information provided. For additional information see “Public Participation” under SUPPLEMENTARY INFORMATION below.

FOR FURTHER INFORMATION CONTACT: Andee Sears, Regional Law Enforcement Specialist, Alaska Regional Office, 240 West 5th Ave., Anchorage, AK 99501. Phone (907) 644-3410. Email: AKR_Regulations@nps.gov

SUPPLEMENTARY INFORMATION:

Background.

Subsistence Uses Authorized by ANILCA

In 1980, Congress enacted the Alaska National Interest Lands Conservation Act (ANILCA) (16 U.S.C. 410hh-410hh-5; 3101-3233) to preserve various nationally significant areas in Alaska. One of the purposes of ANILCA is “to provide the opportunity for rural residents engaged in a subsistence way of life to continue to do so.” 16 U.S.C. 3101(c). Title II of ANILCA established new National Park System units, added to existing units, and determined where subsistence uses would be allowed in those units. Subsistence uses by local rural residents are authorized in all national preserves and in the Alagnak Wild River (managed as a national preserve), Aniakchak National Monument, Cape Krusenstern National Monument, Gates of the Arctic National Park, Kobuk Valley National Park, Lake Clark National Park, Wrangell-Saint Elias National Park, and the additions to Denali National Park. 16 U.S.C. 3113 defines “subsistence uses” as follows:

[T]he customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.

This definition reflects that the creation of hand-made crafts from nonedible natural materials has long been a part of the cultural, social, and economic practices of those living a subsistence way of life in Alaska. While ANILCA does not expressly address making and selling of handicraft articles out of plant materials, the NPS believes it falls within this definition, and that it is not otherwise prohibited. Making and selling handicraft articles out of plant materials is clearly use of a wild renewable resource for barter or customary trade. The omission of plant materials from the statute's specific provision on handicraft articles does not indicate any intent to prohibit their use. That definition provides that fish and wildlife-based handicraft articles for subsistence purposes are only made from "nonedible byproducts" to avoid the take of fish and wildlife solely for the purpose of making handicrafts out of them. Plant materials fall within the definition's more general provision of wild, renewable resources. Subsistence users requested NPS regulations be changed to allow this customary and traditional practice.

Consistency with NPS Regulations

NPS regulations managing subsistence uses are found in 36 CFR part 13, subpart F—Subsistence. NPS regulations regarding the subsistence use of timber and plant materials allow the noncommercial gathering of plant materials for subsistence uses without a permit. 36 CFR 13.485(b). NPS regulations at 36 CFR 13.420 define the terms "barter" and "customary trade" that are used in the statutory definition of "subsistence uses." Barter means the exchange of fish or wildlife or their parts for other fish or game or their parts; or for other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature. This definition recognizes the traditional cultural, social, and economic practices of non-cash exchange of subsistence resources among those living a "genuine subsistence lifestyle" (46 FR 31824, June 17, 1981). Customary trade is limited to the exchange of furs for cash, and other activities

designated for a particular NPS unit by special regulation. This allowance for the exchange of furs for cash acknowledged that trapping was an “integral and longstanding part of the subsistence lifestyle in many regions in Alaska” (46 FR 31824, June 17, 1981). Since the June 1981 rulemaking, two NPS units in Alaska where such customary trade was known to have occurred, Gates of the Arctic National Preserve and Kobuk Valley National Park, have had special regulations that expand the definition of “customary trade” in those units to include the sale of handicraft articles made from plant material taken by local rural residents of the park area and which do not require any written authorization from the superintendent. 36 CFR 13.1006 and 13.1504, respectively. The proposed rule would not change or remove these special regulations which would control over the proposed rule for these units. The NPS specifically seeks comment on whether these special regulations should continue to apply to Gates of the Arctic National Preserve and Kobuk Valley National Park, or whether they should be removed which would make those units subject to the provisions in the proposed rule.

Except for these specific and limited authorizations for barter and customary trade of handicraft articles in Alaska, National Park System-wide regulations at 36 CFR 5.3 generally prohibit engaging in any business in park areas without authorization. This means that other forms of sale, barter, and trade that are customary and traditional uses of wild, renewable resources by rural Alaska residents are not allowed under current NPS regulations. In addition, National Park System-wide regulations at 36 CFR 2.1(a)(1) prohibit the collection of wildlife, plants, or parts thereof. There is a limited authorization for the hand-collection of fruits, berries, nuts, or unoccupied seashells for personal use or consumption, but the sale or commercial use of these products is prohibited. 36 CFR 2.1(c).

Environmental Impact Analysis

The NPS prepared an Environmental Assessment (EA) to analyze the impacts of various alternatives that would address the collection and use of plant materials and nonedible animal parts to make handicrafts that may subsequently be bartered or sold. The NPS received substantial public input during scoping for the EA, including input following presentations to all affected Subsistence Resource Commissions and Regional Advisory Councils. All tribes affiliated with park areas in Alaska were invited to consult on the alternatives in the EA. On April 14, 2014, the Regional Director for the Alaska Region signed a Finding of No Significant Impact (FONSI) that selected the preferred alternative (Alternative D) in the EA as the selected action.

The Proposed Rule

Subsistence Uses of Plants and Nonedible Animal Parts

This part of the proposed rule would implement the selected action identified in the FONSI and would apply to all NPS units in Alaska where subsistence uses by local rural residents are authorized by ANILCA. The rule would allow NPS-qualified local rural residents to collect and use the following items to make and sell handicrafts:

- plant materials; and
- nonedible animal parts (e.g., antlers, horns, bones, teeth, claws, hooves, skins, hides, fur, hair, feathers, or quills) that are naturally shed or discarded, lawfully taken, or that remain on the landscape due to the natural mortality of an animal.

While this proposed rule would authorize the collection and use of feathers of birds not covered by the Bald and Golden Eagle Protection Act or the Migratory Bird Treaty Act (which will generally mean grouse and ptarmigan), collection and use of other bird feathers remains subject to any applicable federal and state laws.

In order to properly manage the collection of nonedible animal parts, subsistence users would be required to have a Federal Subsistence Board customary and traditional use determination for animal species whose nonedible parts would be used to make handicrafts. The determination must be specific to the area where the collection would occur. Eligible persons would also be required to have written authorization from the superintendent to collect plant materials or nonedible animal parts with appropriate terms and conditions to protect area resources and values. The sale of raw, unworked materials or parts would be prohibited. The proposed rule would provide superintendents with authority to set conditions, limits, and other restrictions on collection activities to protect resources and values. Eligibility to collect plants or nonedible animal parts would follow the same criteria for other subsistence uses in national parks, monuments and preserves.

The proposed rule would allow handicrafts to be sold or exchanged through barter or customary trade. The regulatory definition of “barter” would be amended to allow the exchange of handicraft articles for fish or game or their parts; or for other food or nonedible items other than money if the exchange is of a limited noncommercial nature. The regulatory definition of “customary trade” would be amended to allow the exchange of handicraft articles for cash to support personal and family needs, so long as these exchanges do not constitute a significant commercial enterprise. The NPS specifically seeks comment on how the term “significant commercial enterprise” could be further explained to provide more clarity to the public about what exchanges would be prohibited by this rule.

The rule would add a definition of “handicraft article” that is taken from the current Federal Subsistence Regulations at 50 CFR 100.25(a). This definition would clarify that a handicraft must result from the alteration or manipulation of the shape and appearance of natural

materials to create something of greater monetary or aesthetic value. The NPS specifically seeks comment on how the term “substantially greater monetary and aesthetic value” could be further explained to provide more clarity to the public about what qualifies as a handicraft article under this rule.

Collection of Live Wildlife

This part of the proposed rule would clarify that collecting living wildlife (including eggs and offspring) is not authorized in NPS units located in Alaska unless specifically authorized by federal statute or pursuant to (1) an NPS research specimen collection permit issued under 36 CFR 2.5; (2) Federal Subsistence Regulations; or (3) special regulations for Glacier Bay National Park and Preserve. This clarification results from public inquiries about the collection of live raptor chicks in national preserves. The take of wildlife is generally prohibited in NPS units. Although hunting and trapping are allowed in national preserves in accordance with applicable federal and non-conflicting state law and regulations, the NPS does not consider the collection of live raptors or eggs to be hunting or trapping. Moreover, this activity is in any event prohibited by 36 CFR 2.2(a)(2), which prohibits “intentional disturbing of wildlife nesting, breeding, or other activities.” This prohibition applies to activities that might be authorized by the State of Alaska under a falconry permit. In 2009, the U.S. Fish and Wildlife Service and NPS issued memoranda expressly clarifying that collection of raptors is prohibited in units of the National Park System. Because the State of Alaska has authorized some of these practices as “hunting” under state law, the NPS is proposing to eliminate any potential confusion that these activities could be allowed in national preserves as state-authorized “hunting.” The rule would expressly state that the collection or possession of living wildlife, which includes raptors or eggs, is not allowed as a hunting or trapping activity in national preserves in Alaska. This regulation does not

prohibit the use of trained raptors for hunting activities where authorized by applicable federal and state law.

This proposed clarification would not restrict other collection of wildlife for subsistence uses authorized under Title VIII of ANILCA, collection of migratory bird eggs authorized pursuant to U.S. Fish & Wildlife Service regulations, or collection of gull eggs in Glacier Bay by the Huna Tlingit pursuant to the statutory authorization for that activity.

Use of Bait for Taking Bears under Federal Subsistence Regulations

The NPS is proposing to limit the types of bait that may be used to take bears for subsistence uses under Federal Subsistence Regulations in units of the National Park System in Alaska. Under the proposed rule, bait would be limited to (1) parts of legally taken native fish or wildlife that are not required to be salvaged; or (2) remains of native fish or wildlife that died of natural causes. The proposed rule would prohibit items such as dog food, grease, bread, and marshmallows, which are currently allowed and commonly used to bait bears. These practices are inconsistent with NPS regulations that prohibit feeding wildlife (36 CFR 2.2(a)(2)) and the NPS legal and policy framework which calls for managing wildlife for natural processes. It also furthers NPS efforts to avoid habituating wildlife to unnatural food sources, such as human foods.

Compliance With Other Laws, Executive Orders, and Department Policy.

Regulatory Planning and Review (Executive Order 12866).

Executive Order 12866 provides that the Office of Information and Regulatory Affairs (OIRA) in the Office of Management and Budget will review all significant rules. OIRA has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling

for improvements in the nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. The executive order directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

Regulatory Flexibility Act.

This rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based on the cost-benefit and regulatory flexibility analyses found in the reports entitled “Regulatory Flexibility Threshold Analysis: Special Regulations for National Park Areas in Alaska” and “Preliminary Cost/Benefit Analysis: Special Regulations for National Park Service Areas in Alaska” which can be viewed online at <http://parkplanning.nps.gov/akro> by clicking the link “Subsistence Uses of Horns, Antlers, Bones and Plants” and then clicking “Document List.”

Small Business Regulatory Enforcement Fairness Act (SBREFA).

This rule is not a major rule under 5 U.S.C. 804(2), the SBREFA. This rule:

- a. Does not have an annual effect on the economy of \$100 million or more.
- b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions
- c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-

based enterprises.

Unfunded Mandates Reform Act.

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than \$100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

Takings (Executive Order 12630).

This rule does not effect a taking of private property or otherwise have taking implications under Executive Order 12630. A takings implication assessment is not required.

Federalism (Executive Order 13132).

Under the criteria in section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a Federalism summary impact statement. The proposed rule is limited in effect to federal lands managed by the NPS in Alaska and would not have a substantial direct effect on state and local government in Alaska. A Federalism summary impact statement is not required.

Civil Justice Reform (Executive Order 12988).

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

- (a) Meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation; and
- (b) Meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

Consultation with Indian Tribes (E.O. 13175 and Department policy) and ANCSA Corporations.

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and tribal sovereignty. We have evaluated this rule under the criteria in Executive Order 13175 and under the Department's tribal consultation policy and Alaska Native Claims Settlement Act (ANCSA) Corporations policy and have determined that tribal consultation is not required because the rule will have no substantial direct effect on federally recognized Indian tribes or ANCSA Native Corporation lands, water areas, or resources. The NPS is seeking input from Alaska Native tribes and Alaska Native Corporations regarding these potential changes.

Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

This final rule does not contain any new collections of information that require approval by Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Information collection requirements associated with the requirement for the superintendent's written authorization to collect plant materials or nonedible animal parts under this final rule are covered under OMB Control Number 1024-0026, which expires on 08/31/2016. Information collection requirements associated with Federal Subsistence Board customary and traditional use determinations have been approved under OMB Control Number 1018-0075 which expires on 02/29/2016. We may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

National Environmental Policy Act.

This rule does not constitute a major Federal action significantly affecting the quality of the human environment. A detailed statement under the National Environmental Policy Act of

1969 (NEPA) is not required because we reached a Finding of No Significant Impact. The EA and FONSI are available online at <http://parkplanning.nps.gov/akro> by clicking the link “Subsistence Uses of Horns, Antlers, Bones and Plants” and then clicking “Document List.” The other parts of this rule (collection of live wildlife, bear baiting under Federal Subsistence Regulations) are excluded from the requirement to prepare a detailed statement because they fall within the categorical exclusion covering modifications to existing regulations for NPS-administered areas that do not (a) increase public use to the extent of compromising the nature and character of the area or cause physical damage to it; (b) introduce non-compatible uses that might compromise the nature and characteristics of the area or cause physical damage to it; (c) conflict with adjacent ownerships or land uses; or (d) cause a nuisance to adjacent owners or occupants. (For further information see Section 3.3 of Director’s Order #12 Handbook). We have also determined that the rule does not involve any of the extraordinary circumstances listed in 43 CFR 46.215 that would require further analysis under NEPA.

Effects on the Energy Supply (Executive Order 13211).

This rule is not a significant energy action under the definition in Executive Order 13211. A Statement of Energy Effects is not required.

Clarity of this regulation.

The NPS is required by Executive Orders 12866 (section 1(b)(12)), 12988 (section 3(b)(1)(B)), and 13563 (section 1(a)), and by the Presidential Memorandum of June 1, 1998, to write all rules in plain language. This means that each rule we publish must:

- (a) Be logically organized;
- (b) Use the active voice to address readers directly;
- (c) Use common, everyday words and clear language rather than jargon;

- (d) Be divided into short sections and sentences; and
- (e) Use lists and tables wherever possible.

If you feel that we have not met these requirements, send us comments by one of the methods listed in the **ADDRESSES** section above. To better help us revise the rule, your comments should be as specific as possible. For example, you should tell us the numbers of the sections or paragraphs that you find unclear, which sections or sentences are too long, the sections where you feel lists or tables would be useful, etc.

Drafting Information.

The primary authors of this regulation are Jenna Giddens, Bud Rice, and Andee Sears of the Alaska Regional Office, National Park Service; and Jay Calhoun and Russel Wilson of the Division of Regulations, Washington Support Office, National Park Service.

Public Participation.

It is the policy of the Department of the Interior, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule by one of the methods listed in the **ADDRESSES** section above.

Public Availability of Comments.

Before including your address, phone number, e-mail address, or other personal identifying information in your comment, you should be aware that your entire comment—including your personal identifying information—may be made publicly available at any time. While you can ask us in your comment to withhold your personal identifying information from public review, we cannot guarantee that we will be able to do so.

List of Subjects in 36 CFR Part 13

Alaska, National Parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the National Park Service proposes to amend 36 CFR Part 13 as set forth below:

PART 13 – NATIONAL PARK SYSTEM UNITS IN ALASKA

1. The authority citation for part 13 continues to read as follows:

Authority: 16 U.S.C. 3124; 54 U.S.C. 100101, 100751, 320102; Sec. 13.1204 also issued under Sec. 1035, Pub. L. 104-333, 110 Stat. 4240.

2. Add paragraphs (j) and (k) to §13.42 as follows:

* * * * *

(j) Collecting or possessing living wildlife (including eggs and offspring) is prohibited unless expressly authorized by federal statute or pursuant to § 2.5 of this chapter, 50 CFR Part 100, or special regulations in subpart N of this chapter. A falconry permit or other permit issued by the State of Alaska for the take of wildlife does not provide the required authorization. These collecting activities are not allowed as hunting or trapping activities in national preserves under paragraph (a) of this section 13.42. This regulation does not prohibit the use of trained raptors for hunting activities where authorized by applicable federal and state law.

(k)(1) The following types of bait may be used to take bears for subsistence uses:

- (i) Parts of legally taken native fish or wildlife that are not required to be salvaged; or
- (ii) Remains of native fish or wildlife that died of natural causes.

(2) The use of any other type of bait to take bears for subsistence uses is prohibited.

3. Amend §13.420 by:

- A. Adding the terms “Animal parts” and “Handicraft article”
- B. Revising the term “Subsistence uses”

The additions and revisions to read as follows:

§ 13.420 Definitions.

Animal parts means nonedible antlers, horns, bones, teeth, claws, hooves, skins, hides, fur, hair, feathers, or quills that:

- (1) Are obtained from a lawfully hunted or trapped animal;
- (2) Have been shed or discarded as a result of natural life-cycle events; or
- (3) Remain on the landscape as a result of the natural mortality of the animal.

Handicraft article is a finished product made by a rural Alaskan resident in which the shape and appearance of the natural material has been substantially changed by the skillful use of hands, such as sewing, weaving, lacing, beading, drilling, carving, etching, scrimshawing, painting, or other means, which has substantially greater monetary and aesthetic value than the unaltered natural material. The term includes products made from plant materials and from nonedible byproducts of fish and wildlife resources taken for personal or family consumption. This term does not include a trophy or European mount of horns or antlers.

* * * * *

Subsistence uses. As used in this part, this term means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter or sharing for personal or family consumption; and for customary trade. For the purposes of this subpart, the terms—

- (1) “Family” shall mean all persons related by blood, marriage, or adoption, or any person living within the household on a permanent basis; and

(2) “Barter” shall mean the exchange of handicraft articles or fish or wildlife or their parts taken for subsistence uses—

(i) For other fish or game or their parts; or

(ii) For other food or for nonedible items other than money if the exchange is of a limited and noncommercial nature; and

(3) “Customary trade” shall be limited to the exchange of handicraft articles or furs for cash to support personal and family needs; and does not include trade which constitutes a significant commercial enterprise.

4. Add §13.482 to read as follows:

§ 13.482 Subsistence collection and use of animal parts.

(a) Local rural residents may collect animal parts (excluding migratory birds, marine mammals, and threatened or endangered species) for subsistence uses in park areas where subsistence uses are allowed, provided that:

(1) The resident has a federal customary and traditional use determination for the species collected in the game management unit where the collecting occurs (50 CFR Part 100); and

(2) The resident has written authorization from the superintendent issued under § 1.6 of this chapter that identifies specific areas where this activity is allowed.

(b) The superintendent may establish conditions, limits, and other restrictions on collection activities. Areas open to collections will be identified on a map posted on the park website and available at the park visitor center or park headquarters. Violating a condition, limit, or restriction is prohibited.

(c) Non-conflicting State regulations regarding the use of bear claws that are now or may later be in effect are adopted as a part of these regulations.

5. Amend §13.485 by:

- a. Revising paragraph (b)
- b. Redesignating paragraph (c) as paragraph (d)
- c. Adding new paragraph (c)

The revisions and additions to read as follows:

§ 13.485 Subsistence use of timber and plant material.

* * * * *

(b) The gathering by local rural residents of fruits, berries, mushrooms, and other plant materials for subsistence uses, and the gathering of dead or downed timber for firewood for noncommercial subsistence uses, shall be allowed without a permit in park areas where subsistence uses are allowed, provided that local rural residents may not gather plant materials to make handicraft articles for customary trade or barter unless they have written authorization from the superintendent issued under § 1.6 of this chapter that identifies specific areas where this activity is allowed.

(c) The superintendent may establish conditions, limits, and other restrictions on gathering activities. Violating a condition, limit, or restriction is prohibited.

* * * * *

Dated: December 11, 2015

Karen Hyun
Acting Principal Deputy Assistant Secretary for Fish and Wildlife and Parks

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